

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JOSHUA D. LAMBERT,

Plaintiff,

v.

ROBERT S. McKAY, *et al.*,

Defendants.

Case No. C19-1829-BJR-MAT

ORDER RE: MOTION TO DISMISS

Defendant Robert S. McKay filed a Motion to Dismiss (Dkt. 14) in this 42 U.S.C. § 1983 civil rights action. However, as plaintiff observed in his response to the motion (*see* Dkt. 19 at 2) and as described below, defendant's filing was deficient in two respects. The Court now finds and concludes as follows:

(1) As noted in the Court's Order Directing Service of Civil Rights Complaint (Dkt. 7 at 3), defendants filing motions to dismiss or motions for summary judgment MUST serve *Rand* notices concurrently with such motions so that pro se prisoner plaintiffs will have fair, timely and adequate notice of what is required of them in order to oppose the motions. *Woods v. Carey*, 684 F.3d 934, 941 (9th Cir. 2012). In this case, defendant did not file and there is no indication he served a *Rand* notice with the motion to dismiss.

1 Accordingly, defendant is ordered to SHOW CAUSE within **seven (7) days** of the date of
2 this Order why the pending Motion to Dismiss should not be stricken due to the absence of a
3 concurrently filed *Rand* notice. In the alternative, defendant may, within the same seven-day
4 period, serve the necessary warning on plaintiff, provide proof of service to the Court, and renote
5 the Motion to Dismiss. (See Dkt. 7 at 3-4 (containing model language for *Rand* notices).)

6 (2) Defendant also failed to file or serve a declaration with accompanying exhibits
7 referred to in the Motion to Dismiss. (See Dkt. 14 at 2-4.) Defendant is therefore ORDERED to
8 serve and file the omitted declaration within the same **seven (7) day** deadline described above.

9 (3) The Clerk is directed to send copies of this Order to plaintiff, to all counsel of
10 record, and to the Honorable Barbara J. Rothstein.

11 DATED this 9th day of June, 2020.

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14 Mary Alice Theiler
15 United States Magistrate Judge
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